

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: William Gross

Application No.: 09/765,270

Filed: January 18, 2001

For: SYSTEM AND METHOD  
FOR RANKING ITEMS

Attorney Docket No: 9623/656

Examiner: Joseph A. Fischetti

Art Unit: 3627

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

In response to the Office Action dated February 8, 2007, Applicant requests review of the final rejection in the above-identified application. As explained in more detail below, this review is being requested because of clear errors in the Examiner's rejections, and the Examiner's omission of essential elements needed for a *prima facie* rejection. A Notice of Appeal accompanies this Request.

**REMARKS**

Claims 1, 5-15, and 18-36 are pending. In response to an earlier restriction requirement, claims 12-14 were elected for prosecution and claims 1, 5-11, 15, and 18-22 were withdrawn. New dependent claims 23-36 were added in response to the last Office Action and depend, directly or indirectly, from independent claim 12 or 14. The most recent listing of claims is provided in Applicant's Amendment dated November 14, 2006.

As background, an embodiment of Applicant's invention can be explained in relation to claim 12. The claim recites a method of operating a ranking website that ranks hyperlinks to websites affiliated with online vendors. The ranking website calculates estimates of two types of revenue relating to a hyperlink: a click revenue and a purchase commission revenue. The estimated click revenue is calculated using an estimated likelihood that a user will click on the hyperlink (e.g., a click-through) and a fee to be paid to the ranking entity when a user does click on the hyperlink. The estimated purchase commission revenue is calculated using an estimated likelihood

that the user will purchase an item on the website associated with the hyperlink and a commission to be paid to the ranking entity when the user does purchase the item. The estimated revenues associated with a plurality of hyperlinks are compared to rank the hyperlinks relative to one another so as to increase the income received by the ranking entity, and a higher ranking hyperlink is displayed to the user before a lower ranking hyperlink.

Independent claim 14 is similar to claim 12, but recites ranking referrals to on-line vendors instead of hyperlinks and specifies that the ranked referrals are displayed at positions on a website such that the user is more likely to click on a referral having a higher rank.

New dependent claims 23-36 were not examined, supposedly because they are directed to a non-elected invention. Applicant disagrees. These claims depend from elected claims 12 and 14 and should be examined along with claims 12 and 14. At a minimum, independent claims 12 and 14 are generic to their dependent claims, and these dependent claims should be examined and allowed along with claims 12 and 14.

Claims 12-14 are rejected on the basis of three newly-cited references. Specifically, claims 12 and 13 are rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patents 6,993,590 (“Gauthier”); 6,792,458 (“Muret”); and 5,963,915 (“Kirsch”), and claim 14 is rejected as obvious over Gauthier and Muret. Applicant strongly disagrees with these rejections because the cited references have nothing to do with Applicant’s claimed invention.

Gauthier describes a method and apparatus for capturing user-specific data containing information on the user’s interaction with the Internet (e.g., Abstract; col. 1, lines 7-9). The user-specific data reflects a user’s interest and can include each URL request, a time stamp, and a user\_id (e.g., col. 1, lines 24-27; col. 4, lines 24-32). This data can then be organized and mined to provide useful information on users, such as what content the user may be interested in viewing (e.g., col. 1, lines 28-33, 58-67; col. 4, lines 54-57; col. 9, lines 28-38). Contrary to the Examiner’s conclusory assertions, Gauthier in no way discloses, *inter alia*, a ranking website, estimating a click likelihood (that a user will click on a website affiliated with an on-line vendor), or estimating a purchase likelihood (that a user will purchase an item offered on

a website). Gauthier is not applicable, and the Examiner is reading features into Gauthier that simply are not there and would have nothing to do with the subject matter of the Gauthier invention in any event.

Muret is similar to Gauthier. Muret describes a system and method for monitoring and analyzing Internet traffic. Particularly, Muret reads log files produced by web servers and produces reports of various kinds. (E.g., Title; Abstract; col. 1, lines 9-11, 61-64; col. 2, lines 8-22; col. 23, lines 49-57; col. 26, lines 7-30). Muret does *not* disclose calculating an estimated click revenue using a click likelihood and a fee to be received by a ranking entity when the user clicks on a hyperlink, as the Examiner contends. The block passage cited by the Examiner (cols. 23-26) describes “E-commerce reporting” generally, but *not* the specific limitations of Applicant’s claimed invention. More specifically, the statement at col. 26, lines 23-30 that Muret “can correlate money to keywords” has no logical or technical relation to Applicant’s recited limitations.

Neither does Muret disclose estimating a purchase commission revenue using a purchase likelihood and a commission to be received by a ranking entity when the user makes a purchase. The Examiner cites the same block passage in Muret for support. However, the passage has no relation to the specific features of this limitation of Applicant’s claimed invention as well.

Also without basis is the Examiner’s assertion that Muret (at col. 29, lines 5-16 and col. 27, lines 44-53) discloses comparing estimated revenues of websites, ranking the sites so as to increase income received by the ranking entity, and displaying to *the user* a higher ranking website before a lower ranking website. The cited passages of Muret merely describe administrative reports available to a website operator and, again, have nothing to do with Applicant’s claimed limitation.

Kirsch is cited to show a webpage with embedded hyperlinks and does not cure the deficiencies of Gauthier and Muret as explained above.

Independent claim 14 similarly distinguishes over these cited references.

In sum, the cited references do not come close to disclosing the individual limitations of Applicant’s claimed invention, much less the specifically claimed combination of limitations. Therefore, Applicant submits that the Office Action fails to

set forth prima facie rejections for the claims of the application. Accordingly, Applicant respectfully requests a finding that the application is allowed on existing claims 12-14 and 23-36.

Respectfully submitted,

  
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